Oral Statement of

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Before the
Senate Committee on Health, Education, Labor and Pensions
Subcommittee on Employment and Workplace Safety
and
House Committee on Education and Labor
Subcommittee on Health, Employment, Labor and Pensions

10:00 am
December 13, 2007

Chairwoman Murray, Ranking Member Isakson, Chairman Andrews and Ranking Member Kline, and Members of the Subcommittees:

Thank you for this opportunity to discuss recent decisions of the National Labor Relations Board and their impact on employee rights. I understand you are most interested in the decisions we issued in September 2007. In these opening minutes, I will summarize three points that are set forth in my written statement, which I request be included in the record in its entirety.

THE SEPEMBER "RUSH" WAS NOT POLITICAL

First, I want to set the record straight regarding the number and timing of the decisions the Board issued in September 2007. Our critics allege that the "Bush majority" rushed out 61 decisions in September in what they describe as a "massive assault on workers" before the President's term ends. That is just not so. Anyone with a basic knowledge of Board case processing knows that September, the last month of the fiscal year, is the busiest case production time. The Board actually issued 70 decisions in September, after a bi-partisan effort by all five Members to issue the oldest cases. The equivalent numbers for September issuances in the prior four years are 119, 54, 114, and 105. As for the substance of what the Board held, the decisions speak for themselves. It should be noted, however, that in the majority of unfair labor practice decisions issued in September, the Board found one or more violations of the Act by the employer involved.

THE NLRB IS PERFORMING IT STATUTORY MISSION

Second, notwithstanding the special interest group rhetoric you may be hearing about the NLRB, I want to assure Congress that the Agency is successfully carrying out its statutory mission to administer the National Labor Relations Act as it has been written by Congress and interpreted by the reviewing courts. Consider these facts:

- In FY 2007, the NLRB collected $110,388,806 in backpay and obtained reinstatement offers for 2,456 employees. Over my five-year tenure as Chairman, the NLRB recovered a total of $604 million on behalf of employees as backpay or reimbursement of fees, dues, and fines, with 13,279 employees offered reinstatement.
- In FY 2007, the NLRB held 1,559 representation elections, of which unions won 54.3%. The overwhelming majority of those elections (93%) were held within 56 days.
- Over the same period, 66% of the 22,164 unfair labor practice charges were investigated and resolved by the NLRB within 120 days of the docketing of the charge.
- Of charges found to have merit, some 90% are settled prior to the issuance of a complaint. In FY 2007, the median time to issue complaints was 98 days. Complaints that Regional Directors do issue in meritorious cases go to hearings before NLRB Administrative Law Judges. Their decisions can be appealed to the Board here in Washington, D.C. The Board's decisions are subject to review and enforcement in the U.S. Courts of Appeals. In FY 2007, our decisions were enforced in whole

86.6% and, in whole or part, 97% of the time – the highest enforcement rates in the Agency's history.

- Since 1990, the cases pending before the Board in Washington have represented only 1% to 2% of cases filed with the Agency nationwide. By focusing only on this small percentage of Board decisions, some critics give the impression that the delay inherent in a fully-litigated case is the norm. This is not true. Overall the NLRB's case processing record is impressive.
- As for the Board's productivity, since I became Chairman, we issued almost 500 cases a year through the end of FY 2007. The median number of days an unfair labor practice case was pending at the Board was 181 days as of the end of FY 2007; for representation cases, the median was 88 days. Also, we reduced the backlog to 207 cases or a reduction of some 66.5% over five years. We are at the lowest case inventory level in over 30 years. Granted, a lower intake of cases helped us in this effort, but overall we did well bringing the caseload down to a respectable working inventory.

BOARD ENFORCES ACT AS AMENDED

Third, our critics lose sight of the fact that the statute was amended in 1947 by the Taft-Hartley Act to protect employees from not only employer interference but also union misconduct, and to give employees the equal right to refrain from union activities and representation. In the words of the Supreme Court, "The Act is wholly neutral when it comes to that basic choice" (*NLRB v. Savair Manufacturing)*. The Board is obligated

to enforce the law as enacted by Congress despite what any affected party may wish for – a return to 1935 or to some future legislative result.

The statute was not intended to benefit unions or employers. Rather, the rights granted by the statute belong only to employees – whether unionized or not. Once again, the fundamental principle of the Act is to provide for employee free choice, allowing employees to decide for themselves whether or not to be represented by a union or otherwise to act concertedly in dealing with their employer.

If employees exercise their right of free choice in favor of union representation, the policy of the Act, and the responsibility of the Board, is to encourage collective bargaining by making sure that unions as well as employers bargain in good faith, free from governmental interference. If employees exercise their right of free choice not to be represented, it is the Board's responsibility to respect that choice and ensure against union restraint or coercion. The law is neutral . . . and so is this Agency.

Thank you for your attention.

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